

MINUTES

WARRICK COUNTY AREA BOARD OF ZONING APPEALS

Regular meeting held in the Commissioners Meeting Room,
Third Floor, Historic Courthouse,
Boonville, Indiana
May 23, 2011 at 6:00 P.M.

PLEDGE OF ALLEGIANCE A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Larry Willis, Chairman; Mike Winge, Vice Chairman, Scott Dowers, Judy Writsel, Terry Dayvolt and Don Mottley.

Also present were Morrie Doll, Attorney, Sherri Rector, Executive Director and Sheila Lacer, Staff.

MEMBERS ABSENT: Tina Baxter

Roll call was taken and a quorum declared present.

MINUTES: Upon a motion made by Mike Winge and seconded by Don Mottley, the Minutes of the last regular meeting held April 25, 2011, were approved as circulated.

The Chairman explained the Rules of Procedure to the audience.

VARIANCE:

BZA-V-11-11 - APPLICANTS: Christopher and Julie Scott. OWNER: Christopher Scott.

PREMISES: Property located on the E side of Folsomville Rd. approximately 1380' S of the intersection formed by Folsomville Rd. (E 400) & Shelton Rd. (N 400) Boon Twp. 408 S. *Folsomville Rd.*

NATURE OF CASE: Applicants request a Variance from the requirements as set forth in the Comprehensive Zoning Ordinance in effect for Warrick County, Indiana to allow an Improvement Location Permit be issued for a single family dwelling on property with an existing single family dwelling to be removed in an "A" Agriculture and "CON" Recreation and Conservancy zoning districts. *(Complete legal on file.) Advertised in the Boonville Standard May 12, 2011.*

Christopher Allan Scott was present.

The Chairman called for a staff report.

Mrs. Rector stated they have submitted all of the return receipts from certified mail of notice of this meeting to the adjacent property owners. She stated this Variance is to allow an ILP be issued for a single family dwelling on property with an existing residence. She stated the

applicants state *Due to the age and current condition of our existing home we are wanting to build a new house on our property. We are wanting to build our new home directly behind our existing home. We wish to continue to live in our existing home until building is completed on our new home and then tear down and clean up our current house. Construction should take approximately 12 months but due to current economy we are wanting to ask for 24 months just to be safe. Thank you.* Mrs. Rector stated the property is in two tracts – one tract is 1.14 acres and this is where the existing house is located. She explained there is an existing 20 x 20 shed and a 45 x 60 unattached storage building on this tract also. She then explained the other tract is 17 acres and it has an existing 34 x 40 unattached storage building located on it. She stated the new house will cross the property lines between both tracts which is why they need the Variance. She added if the proposed new house was located solely on the 17 acre parcel they would not need a Variance. She added their request for 24 months to construct the house falls within the parameters of the Improvement Location Permit because that permit is good for six months to start and two years to complete construction. Mrs. Rector stated the property to the north is zoned Agriculture and CON and there is a cabin; to the east, west and south is zoned Agriculture and vacant and the property to south has old the F-P zoning. Mrs. Rector stated there is a portion of the southern boundary of the property that lies in a Zone A Flood Plain but the building area is away from that area. She added there is an existing driveway on Folsomville Road. Mrs. Rector informed the Board that the Scotts attempted to rezone a portion of this property in 2005 for a lumber yard/sawmill but that rezoning petition was denied by the County Commissioners. She stated the application is in order.

Mr. Scott had nothing to add.

The Chairman called for questions from the Board.

Judy Writsel asked if he owns both pieces of property.

Mr. Scott stated he does.

Mrs. Writsel asked if he wants to keep them as separate pieces.

Mr. Scott stated that is the way it was when he bought the property and he has never proceeded with anything.

Mrs. Rector stated when they issue the permit it will be tied to both pieces of property.

Mrs. Writsel stated that sometimes you can survey things and just move the boundaries or adjust the lots.

Mrs. Rector stated they don't want to keep their old house.

Mrs. Writsel stated she is thinking this is going to become confusing for taxes and also if they would want to sell the property sometime down the road they could have the house on one parcel and it wouldn't complicate trying to sell the house.

Mrs. Rector stated there are several times that people purchase two subdivision lots and build across the property lines and so it isn't uncommon.

Mike Winge stated they still might want to look into having a surveyor move the lines for tax purposes.

Attorney Doll stated that or put it all in one parcel.

Mr. Scott stated he thought about re-deeding it at some point.

Attorney Doll stated he could do a quit claim deed to himself after he gets it surveyed and put it into a single parcel, if that is his goal. He stated at one point in time he tried to use part of this property for a business. He stated if he doesn't intend to do that then he could make the house lot bigger and parcelize it after he puts it into one piece. He stated that would give him all of his residential property on one tax bill and one deed and then the rest of the ground on something else and it ought not be too expensive to do. He stated he is sure the staff could explain this more to him. He stated it will benefit him on his taxes and it will benefit him if he ever desires to sell this down the road.

Mrs. Writsel stated that was her concern.

Mike Winge asked if his tree service is located there.

Mr. Scott stated yes.

Mike Winge stated he would be an excellent candidate for a home workshop. He asked if he has employees.

Mr. Scott stated he doesn't have employees at the moment but he has (in the past).

Mrs. Rector stated he was not approved for any business at his home.

Mike Winge stated so he would have to go through the whole process then and he isn't aware of that home workshop. He stated so in other words, if he takes part of that...

Attorney Doll stated it would be one lot; again it would be residential purpose and business purpose married together in a home workshop permitted use. He then explained to Mr. Scott that the rules have changed some since 2005 and stated he can now co-locate a home and a business under certain circumstances on the same parcel of property and have employees, trucks, the whole nine yards. He stated this didn't exist when he was here before.

Mrs. Rector stated it isn't a rezoning like he tried to get before.

Attorney Doll stated it is made to work in Agriculture zoning areas. He stated if his goal is to operate his business there then he can build a building and do all kinds of stuff. He stated he has 17-18 acres and so he could build a 10,000 square foot building, have ten trucks and ten

employees but he has to live there on the property. He stated he isn't trying to talk him out of what he is asking for tonight and none of what they are talking about tonight actually has anything negative effects on what he is asking for tonight. He stated if he needs more information the Area Plan Commission office has that and can help him.

Mr. Scott stated he does have one question and it doesn't really apply to this but in the future he would like to have fish farm out there, raise fish and sell them; does that fall under the Agriculture and CON zoning or is it commercial.

Attorney Doll stated he is sure it does. He stated he is trying to figure out if it falls underneath a home workshop – he doesn't think it does.

Mrs. Rector stated under that they can't have retail sales.

Mrs. Writsel stated that is livestock.

Attorney Doll stated he thinks he talking about wholesale not retail sales.

Mr. Scott stated it would just be one buyer at the end of the year and really they would own the fish anyway.

Mrs. Rector stated she thinks that is just a use under Agriculture.

Mrs. Writsel stated she thinks fish are livestock.

Attorney Doll stated he agrees and he thinks he can do that as it currently exists.

Mike Winge stated the thing he has to keep in mind is that a lot of people operate illegally and this home workshop allows him to have employees and it is no big deal to apply for; he is doing right now what he would have to do for that. He stated the County has worked with the people who do this to help small businesses so it is something he should look into especially if he is going to have employees.

Mr. Scott stated he will.

Ascertaining there were no further questions from the Board, the Chairman called for remonstrators. Being none, he called for a motion.

Mike Winge made a motion to approve the Variance Application based upon and including the following findings of fact:

1. The grant of the Variance will not be injurious to the public health, safety, morals, and general welfare of the Community. As such, it is further found that the granting of the Variance shall not be materially detrimental to the public welfare.

2. The use or value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. As such, it is further found that the granting of the Variance shall not result in substantial detriment to adjacent property or the surrounding neighborhood.
3. The need for the Variance arises from some condition peculiar to the property involved. The peculiar condition constituting a hardship is unique to the property involved or so limited to such a small number of properties that it constitutes a marked exception to the property in the neighborhood. Such condition is it is adjacent properties and one of them is too small to do much with without the conjunction of the other.
4. The strict application of the terms of the Warrick County Comprehensive Zoning Ordinance will constitute a practically difficulty, unusual and unnecessary hardship if applied to the property for which the Variance is sought.
5. The approval does not interfere substantially with the Warrick County Comprehensive Zoning Ordinance adopted pursuant to IC 36-7-4-500 et seq.
6. The granting of the Variance is necessary in order to preserve a substantial property right of the petitioner to use the property in a reasonable manner, and not merely to allow the petitioner some opportunity to use his property in a more profitable way or to sell it at a greater profit.
7. That the hardship to the applicant's use of the property was not self-created by any person having an interest in the property nor is the result of mere disregard for or ignorance of the provisions of the Warrick County Comprehensive Zoning Ordinance.
8. The approval of the requested Variance is the least modification of applicable regulations possible so that the substantial intent and purpose of those regulations contained in the Warrick County Comprehensive Zoning Ordinance shall be preserved.
9. This Variance shall expire six (6) months after this date, UNLESS a Permit based upon and incorporating this Variance is obtained within the aforesaid six (6) month period or unless the provision of the Variance are adhered to within the aforesaid six (6) month period. Upon advance written application for good cause, a renewal for an additional six (6) month period may be granted by the Secretary of the Area Plan Commission.
10. The Variance Application is subject to the terms contained therein and the plans on file subject to the following additional conditions:
 - a) Subject to an Improvement Location Permit being obtained.
 - b) Subject to any required Building Permit from the Warrick County Building Department being obtained.

- c) Subject to the property being in compliance at all times with the applicable zoning ordinances of Warrick County.
- d) Subject to all utility easement and facilities in place.
- e) Subject to existing house being demolished and removed from the property within 90 days from issuance of Certificate of Occupancy. Applicant will supply office with Certificate of Occupancy when issued.
- f) Subject to the Rules and Regulations of the Health Department.

The motion was seconded by Judy Writsel and unanimously carried.

Mrs. Rector stated he can pick up his approval on Wednesday and they can go over all the other information he was given this evening.

OTHER BUSINESS:

None.

ATTORNEY BUSINESS:

Attorney Doll stated that a fish farm is not a listed use in the Agriculture definition. He stated horticulture is but not aquaculture. He stated they may want to look into that. He stated they could probably get it in “any other agriculture industry or business such as dairy farms, green houses, or similar uses.” He stated if they look at the Agriculture district, the only one that might fit would be general breeding stock and raising. He stated if you consider fish general stock then...

Mike Winge stated they are breeding and raising them for a purpose.

Attorney Doll stated if they would just put in the word aquaculture in the Agriculture definition they may be grateful they did it someday.

Mrs. Rector stated it is very difficult to change these ordinance books and asked if they couldn’t just make a Board ruling that it fits in the Agriculture zoning.

Attorney Doll stated they would have to do it each time.

Mike Winge asked how often that comes up.

Attorney Doll stated what it is designed to do is so it doesn’t come up if they make that the definition and put it in the ordinance then someone won’t have to come before them to start fish farming.

Mrs. Rector stated the ordinance also says “similar use” so couldn’t the Board say they think that is general breeding livestock.

Attorney Doll stated yes but it takes the Commission saying that so if they put the word aquaculture in there then they never have to hear it at the Plan Commission.

EXECUTIVE DIRECTOR BUSINESS:

None.

Being no other business the meeting adjourned at 6:25 P.M.

Larry Willis, Chairman

ATTEST:

The undersigned Secretary of the Warrick County Board of Zoning Appeals does hereby certify the above and foregoing is a full and complete record of the Minutes of said Board at their monthly meeting held May 23, 2011.

Sherri Rector, Executive Director & Secretary